of a receiver, the locomotives were sold by order of the court, and A Co. seeks to recover the price received for them, and not share as a general creditor in the distribution of assets. *Held,* that the instrument of October was not a lease, but a contract of conditional sale, which was void because title had already passed. *H. K. Porter Co.* v. *Boyd, E. I. Dupont Co.* v. *John Shields Const. Co.* (1909), — Cir. Ct. App. 3rd Cir. —, 171 Fed. 305.

The contention that B Co. as lessee of the property would be estopped from denying the title of its lessor would be deciding (*Blight's Lessee* v. *Rochester,* 7 Wheat. 535, 5 L. Ed. 516; *Willison* v. *Watkins,* 3 Pet. 43, 47, 7 L. Ed. 596) if the instrument of October could be treated as a lease. Although the instrument contains the words "hath let," "doth let," "term," "quit and surrender," "reasonable wear and use," and so forth, it was not a lease or bailment for hire, owing to the conditions existing at the time between the parties. Neither is the instrument good as an equitable lien, which would be enforceable between the original parties and mere volunteers or those who take the property with notice of the agreement (*Walker* v. *Brown,* 165 U. S. 654, 17 Sup. Ct. 453, 41 L. Ed. 865; *Booz* v. *Philadelphia & L. Transp. Co.* (C. C. A.) 124 Fed. 430); but even if this position were not repugnant to the claim of legal ownership, yet it would be a secret lien which could not avail against an attachment or execution creditor, not chargeable with knowledge or notice of its existence at the time of contracting his claim. The instrument must be treated as a conditional sale. *Mishawaka Woolen Mfg. Co.* v. *Smith* (D. C.) 158 Fed. 885; *Bronson* v. *Russell,* 142 Ala. 360, 37 South. 672; *Bradley, Clark & Co.* v. *Benson,* 93 Minn. 91, 100 N. W. 670), void because title has already passed, *Neal & Co.* v. *Boggan,* 97 Ala. 611, 11 South. 809; and the receiver having the rights of a levying creditor, *Duplex Printing Press Co.* v. *Clipper Publ. Co.,* 213 Pa. 207, 62 Atl. 841, A Co. must share with the general creditors.

SALES—RIGHT OF RESCISSION—REASONABLE TIME.—A farmer sold and delivered wheat to an elevator company, and receiving the company's check on a local bank after banking hours, he carried the check home with him, a distance of eight miles. He presented the check between two and three weeks later, the first time that he had been to town, and payment was refused, as the company had become insolvent a week prior to that time. When the check was drawn, the buyer had no funds on deposit, but had an arrangement with the bank, under which it paid his checks and took bills of lading on shipments of grain as security. The bank had attached the wheat, and the check being dishonored, the seller sued the bank for its value. *Held*—that his failure to make an earlier presentation of the check did not show a waiver of his right to reclaim the wheat. *People's State Bank of Michigan Valley et al.* v. *Brown* (1909), — Kan. —, 103 Pac. 102.

In the absence of any agreement to the contrary, the transaction must be taken to be a sale for cash, MECHEM, SALES, § 538; *Dixon* v. *Williamson,* 173 Mass. 50; *W. & R. McArthur Co.* v. *Old Second Nat'l Bank,* 122 Mich.

223, giving the seller right to reclaim on failure to receive the purchase price, MECHEM, SALES, §§ 554, 555, 556, 24 AM. & ENG. ENCYC. OF LAW, 1052; *Daugherty* v. *Fowler,* 44 Kan. 628; *McIver* v. *Williams,* 83 Wis. 570. There is authority to support an opposite view (WILLISTON, SALES, §346) but it is not adopted by the court. This being true, the determining question is: "Did the delay of between two and three weeks afford proof of waiver of the right to reclaim, thereby causing the elevator company's title to become absolute?"; for it is admitted that though the bank was not in the position of a purchaser in good faith (13 L. R. A. (N. S.) 705 Note) if the title passed, there is no reason why it might not seize the wheat to satisfy its claim. If the buyer does not live up to his agreement, the seller may retake the goods. *Daugherty* v. *Fowler,* 44 Kan. 628, 25 Pac. 40, 10 L. R. A. 314, and they are considered as held in trust if reasonable speed is made. *Harding* v. *Metz,* I Tenn. Ch. 610. See 120 Am. St. Rep. 869 note. Here the acceptance of the check did not imply an extension of credit, or preclude the seller from reclaiming the goods in case the check was not paid when presented. *Hodgson* v. *Barrett,* 33 Ohio St. 63, 31 Am. Rep. 527; *Nat'l Bank of Commerce* v. *C. B. & N. R. Co.,* 44 Minn. 224, 46 N. W. 342, 560, 9 L. R. A. 263, 20 Am. St. Rep. 566; *Peoria & P. U. Ry. Co.* v. *Buckley,* 114 Ill. 337, 2 N. E. 179. Title does not pass until payment, unless circumstances show an intentional waiver by the seller of the payment as a condition precedent to the passing of title. This is a question of fact for the jury, and what is a reasonable time (*Frech* v. *Lewis,* 218 Pa. 141, 67 Atl. 45, 120 Am. St. Rep. 864, 11 L. R. A. (N. S.) 948) within which to act must depend on the circumstances of the case and the situation of the parties. A delay of over a month (*Paulson* v. *Lyon,* 26 Utah 438) may not be fatal, and under other circumstances a delay of eight days (*Smith* v. *Dennie,* 6. Pick. (23 Mass.) 262, 17 Am. Dec. 368) may be unreasonable. The court states that it would be establishing too vigorous a rule to say that unless the check was presented not later than the day after it was received the right to reclaim is lost, and "after passing that limit, there seems to be no place where a hard and fast line can be drawn dividing reasonable and permissible delay from what is unreasonable and prohibited." It would seem that under the circumstances it would be at least not unreasonable to have required a presentation of the check in less than two weeks.